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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 42, and 52

[FAR Case 2018-003, Docket No. FAR-2018-0003, Sequence No. 1]

RIN 9000-AN61

**Federal Acquisition Regulation: Credit for Lower-Tier Small
Business Subcontracting**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD, GSA, and NASA are withdrawing this proposed rule. The decision not to proceed with a final rule was made because the underlying statute has been changed. Accordingly, this proposed rule is withdrawn, and the FAR case is closed.

DATES: The proposed rule published on June 6, 2019, at 84 FR 30071, is withdrawn as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Regulatory Secretariat Division (MVCB), 1800 F Street NW., 7th Floor, Washington, DC 20405, 202-501-4755.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571-300-5917, or by email at *carrie.moore@gsa.gov*. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov*. Please cite "FAR Case 2018-003".

SUPPLEMENTARY INFORMATION:

I. Background

On June 6, 2019, DoD, GSA, and NASA proposed to amend the FAR to implement section 1614 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (Pub. L. 113-66), as implemented by the Small Business Administration (SBA) in its final rule published on December 23, 2016, at 81 FR 94246. SBA's final rule and section 1614 address credit for lower-tier small business subcontracting. On December 19, 2022, SBA published a proposed rule at 87 FR 77529 to amend its regulations to implement section 870 of the NDAA for FY 2020 (Pub. L. 116-92), which amended the requirements set forth in section 1614 of the NDAA for FY 2014. Section 870 of the NDAA for FY 2020 made three changes that require SBA to change some of the provisions set forth in its December 2016 final rule as follows: (1) A prime contractor may elect, in some instances, to receive credit toward its subcontracting

plan for lower-tier subcontracts to small businesses; (2) Agencies are prohibited from setting tier-specific goals for prime contractors that use lower-tier credit; and (3) Subcontracting plans are required to recite the records that contractors will maintain to substantiate lower-tier credit.

Because of the statutory changes made since the proposed rule was issued in 2019, the FAR Council believes further consideration of any amendments to the FAR related to credit for lower-tier subcontracting should be accomplished under a new FAR case. Accordingly, the proposed rule published on June 6, 2019, at 84 FR 30071 is withdrawn and FAR Case 2018-003 is closed. Section 1614 of the NDAA for FY 2014, as amended by section 870 of the NDAA for FY 2022, will be implemented via a new FAR case.

List of Subjects in 48 CFR Parts 19, 42, and 52

Government procurement.

William F. Clark,

Director,

Office of Government-wide Acquisition Policy,

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Office of Government-wide Policy.

